

Organizations that are exclusively religious, educational, or charitable can make application to the Department for exemption identification numbers required to make tax-free purchases of tangible personal property for use or consumption. See, 86 Ill. Adm. Code 130.2007. (This is a GIL.)

June 25, 2001

Dear Xxxxx:

This letter concerns the application of the FUND for a sales tax exemption number. After examining the materials that the Fund's President, submitted with his May 30, 2001 letter requesting sales tax exempt status as a purchaser and considering the legal requirements that the Department must observe, I am required to conclude that the application should be denied. I have discussed the application with the Department's General Counsel and Deputy General Counsel for Sales Tax, and they both concur. The Department's Exemption Section will soon be sending the Fund a letter that denies its application. That is a computer-generated letter and it is not very specific. Consequently, we are sending you this letter to explain the denial.

We understand from the organizational documents submitted with the application and from information provided to the Department's Exemption Section that the Fund is a not-for-profit organization that intends to rent computer equipment to SCHOOL. The Fund will make charges for those rentals. The Fund will also conduct training sessions for SCHOOL personnel who will operate the computers and the Fund will make charges for this training. We understand that the Fund has not yet begun operations. Based on these activities, we cannot conclude that the Fund qualifies for sales tax exempt status as a purchaser.

In the context of its application, the Fund can qualify for sales tax exempt status only if it qualifies as an exclusively educational organization or an exclusively charitable organization.

In order to qualify as an exclusively educational, an organization must fall within the following definition set out at section 2h of the Retailers' Occupation Tax Act:

"For purposes of this Act, a corporation, limited liability company, society, association, foundation, or institution organized and operated exclusively for educational purposes shall include: all tax-supported public schools; private schools which offer systematic instruction in useful branches of learning by methods common to public schools and which compare favorably in their scope and intensity with the course of study presented in tax-supported schools; licensed (not for profit) day care centers...vocational or technical schools or institutes organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business or commercial occupation."

35 ILCS 120/2h.

The Fund does not fall within this definition and, for that reason, does not qualify as an exclusively educational organization for purposes of Illinois sales tax exempt status.

Generally, in order to qualify as exclusively charitable, an organization must dispense charity in some manner that relieves the public of a burden or otherwise confers a benefit on the public. The fact that an organization makes a charge for its service to those who can pay does not disqualify it as a charitable organization so long as it provides that service without charge to those who can not pay. We cannot conclude that an independent organization renting computers to one school constitutes the dispensation of charity. Moreover, even assuming that renting computers to schools did constitute the dispensation of charity, there is no provision in the Fund's organizational documents requiring it to provide this service to schools that apply on the basis of need. In fact, there is no indication of a charitable intent demonstrated anywhere in the Fund's organizational documents.

More specifically, in order to qualify as exclusively charitable, an organization must satisfy the test set out in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968). The distinctive characteristics that Korzen sets out as being common to all charitable organizations are that they:

- 1) have no capital stock or shareholders;
- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;
- 4) do not provide gain or profit in a private sense to any person connected with it; and
- 5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Based on the Fund's organizational documents and intended activities, Korzen characteristics 2, 3 and 5 are not present. Characteristic 2 is not present because the Fund will not derive its resources mainly from public and private charity. Rather, it will derive its funds from rental charges made to SCHOOL for the computers and from associated fees charged for training. Characteristic 3 is not present because the Fund will not dispense charity to all who need and apply for it. Even assuming that renting computers and providing computer training to schools constitutes the dispensation of charity, the fund does not provide these services to all who need and apply. Characteristic 5 is not present because the Fund places an obstacle in the way of those who would avail themselves of charitable benefits. The Fund charges for its services and has no policy to provide its services for no charge, or for a reduced charge, to those who cannot pay. Consequently, we are unable to conclude that the Fund qualifies as an exclusively charitable organization.

For these reasons, the Department is unable to issue a sales tax identification number to the Fund.

Very truly yours,

Karl W. Betz
Associate Counsel